

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9131 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

SHAIKH ISMAIL SHAIKH NAZIR

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MR AJ DESAI AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 01/02/2000

ORAL JUDGEMENT

#. Heard Mr. Anil S.Dave, learned advocate for the petitioner and Mr.A.J.Desai, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 28-5-1999 passed by

respondent No. 1 - The Commissioner of Police, Surat against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 ('PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure- C interalia indicates that two criminal cases were registered against the petitioner on 26-4-98 and 3-2-1999 respectively at Limbayat Police Station. That both these cases have been registered against the petitioner for the offence made punishable under Section 324, 326, 504 114 and 307 etc. of IPC and 135 of Bombay Police Act.

#. That two witnesses on assurance of anonymity have given information regarding the bootlegging activities of the petitioner vide statement dated 18-5-99 and 19-5-99 respectively, wherein, the incidents of 27-4-99 and 10-4-99 respectively have been referred. That on the basis of the said material, the respondent No. 1 The Commissioner of Police, Surat as the detaining authority has come to the conclusion that the petitioner / detenu is a dangerous person within the meaning of Section 2(c) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial anti social activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that the privilege claimed by the detaining authority under Section 9(2) of PASA in respect to identity of anonymous witnesses is not genuine. That the copies supplied to the petitioner does not disclose any date on which the said statements have been verified by the detaining authority and as such, the detention order is bad in law.

#. That in the matter of JAKIRBHAI RAHIMBHAI NAGORI VS. THE DISTRICT MAGISTRATE, MEHSANA AND OTHERS reported vide 1996(1) GLH 300, this Court has expressed the view that the claim of privilege made by the detaining authority on the basis of the such endorsement cannot be said to be a genuine. That thereby the petitioner is prevented from making an effective representation against his detention and continued detention is illegal.

#. In the instant case, on scrutiny of papers, it appears that the statement of anonymous witnesses though contained endorsement of detaining authority, it does not disclose the date on which the said endorsement has been made or the facts of the said statements have been verified by the authority. The petitioner has raised the said contention vide para No : 14 in the petition, that in the absence of any such explanation, the mandate of the Constitution vide Article 22(5) having been violated, and continued detention of the petitioner is illegal.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 28-5-99 passed by respondent No. 1 - The Commissioner of Police, Surat City against the petitioner is hereby quashed and set aside. The petitioner - SHAIKH ISMAIL SHAIKH NAZIR is ordered to be set at liberty forthwith, if not required in any other case. Rule to the aforesaid extent is made absolute.

Date : 1-2-2000 [A.K.Trivedi, J.]

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